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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,847	01/31/2001	Harald Krondorfer	1466	6258
7590	04/28/2004		EXAMINER	
STRIKER, STRIKER & STENBY			TRAN, LOUIS B	
103 East Neck Road			ART UNIT	PAPER NUMBER
Huntington, NY 11743			3721	<i>24</i>
DATE MAILED: 04/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/774,847	KRONDORFER ET AL.
	Examiner	Art Unit
	Louis B Tran	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 18 February 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 11-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 11-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

This action is in response to applicant's amendment, Paper No. 23, received on 02/18/2004.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "said safety element being movable to avoid a passage of vibrations through the safety element being movable relative to said gripping part to avoid a passage of vibrations through the safety element during a predetermined operation, and being formed so as *not to provide a positive dampening action for...*". It is unclear what this limitation is intended to encompass. The limitation requires the safety element to be movable to avoid vibration but not to provide positive dampening action. These two concepts are contradictory. Avoiding vibration is effectively providing positive dampening action. Clarification is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 11,20-23 rejected under 35 U.S.C. 102(b) as being anticipated by Radle et al. (5,697,456).

With respect to claim 11, Radle et al. teaches hand power tool comprising a mounting part, at least one handle having at least one gripping part 28 and a separate mounting part, at least one separate elastic vibration dampening element 56 mounted on said mounting part 32, said at least one gripping part being mounted on said housing through said separate elastic element and through said mounting part, and at least one additional moveable safety element 52 through which said gripping part is connected with said mounting part, said safety element being movable relative to said gripping part to avoid a passage of vibrations through the safety element during a predetermined operation and being formed so as not to provide a positive dampening action for dampening of the vibrations by said elastic element.

With respect to claim 20, Radle et al. teaches wherein said safety element 52 is connected to said gripping part 28 exclusively via said elastic vibration damping element seen in Figure 2.

With respect to claim 21, Radle et al. teaches wherein said safety element is formed by a rigid rod which is completely surrounded by said elastic vibration damping element seen in Figure 2.

With respect to claim 22, Radle et al. teaches sleeves mounted on said mounting part and on said gripping part correspondingly and provided with discs, said safety element being arranged at the distance to said sleeves and said discs, which distance is filled with an elastic material, seen in Figure 2.

With respect to claim 23, Radle et al. teaches two sleeves mounted on said mounting part and on said gripping part correspondingly and provided with two discs, such that said sleeves 56 and said discs limit corresponding chambers, said safety element being formed as a rod having two ends provided with further discs, said further discs being non-releasably held in said chambers seen in Figure 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 11-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jares (5,172,522) in view of Weber (DE 8701722 U1) in further view of Minamidate et al. (GB 2080920).

Jares discloses the invention substantially as claimed including a hand power tool comprising a housing 1, at least one handle having at least one gripping part 3 but does explicitly show at least one handle having at least one gripping part, at least one elastic vibration dampening element mounted on said mounting part, said at least one gripping part being mounted on said housing through said elastic element and through said mounting element, and at least one additional moveable safety element through which said gripping part is connected with said mounting part, said safety element being movable to avoid a passage of vibrations through the safety element during a pre-

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determinable operation and being formed so as not to counteract a dampening of the vibrations by said elastic element.

However, Weber teaches the use of at least one handle having at least one gripping part 11, at least one elastic vibration dampening element mounted on said mounting part, said at least one gripping part being mounted on said housing through said elastic element 5 and through said mounting element.

Therefore it would have been obvious to one having ordinary skill in the art to provide Jares with a handle with the specific features above in order to dampen vibrations.

Moreover, Minamidate et al. teaches at least one additional moveable safety element 3 through which said gripping part is connected with said mounting part, said safety element being 3 movable to avoid a passage of vibrations through the safety element during a pre-determinable operation and being formed so as not to counteract a dampening of the vibrations by said elastic element (a portion of item 1) seen in Figure 1(as in claim 11), a safety element 3 in the form of a flexurally non-rigid part (as in claim 12), as in column 2, line 101, formed as a rigid component which is connected through said elastic element with said gripping part and mounting part (as in claim 14), where elastic element surrounds safety element (as in claim 15), wherein safety element is arranged in said elastic element along a central axis (as in claim 16), wherein safety element in a mounted condition is loaded by pulling and elastic element in a mounted condition is loaded by pressure (as in claim 17), as seen in Figure 1, and wherein safety element determines a maximum deviation of said elastic element from a

base position a tilting direction (as in claim 19) for the purpose of providing vibration-damping while rigidly supporting a hand grip to facilitate positive control as described in column 1 line 25 of Minamide et al.

Therefore, it would have been obvious for one having ordinary skill in the art to provide the modified device of Jares with the features above in order to provide vibration-damping while rigidly supporting a hand grip to facilitate positive control.

With respect to claim 13, the modified device of Jares discloses the claimed invention except for a safety element is formed as a metal wire. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a rope instead of a metal wire, since it is recognized that the equivalence of wires and ropes for their use in the art and the selection of any of these known equivalents to provide a connection between two objects would be within the level of ordinary skill in the art.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jares (5,172,522) in view of Weber (DE 8701722 U1) and Minamide et al. (GB 2080920) as applied to claim 11 above, and further in view of Radle et al. (5,697,456).

The modified device of Jares discloses the invention substantially as claimed including a safety element but does not show a safety element formed as a band which surrounds said elastic element.

However, Radle et al. teaches the use of a safety element as a band 100 which surrounds an elastic element 98 for the purpose of acting as a covering element

therefore protecting vibration dampening components from outside conditions as in column 6, line 20 seen in Figure 3.

Therefore, it would have been obvious for one having ordinary skill in the art to provide the modified device of Jares with a band acting as a cover in order to provide covering from outside elements.

Conclusion

8. Applicant's remarks have been fully considered but are deemed non-persuasive.

Initially, Applicant has referred to "Ragley" through the arguments portion of the previous amendment. It is assumed Applicant has intended to refer to Radle et al., as cited by Examiner.

Applicant has included the word "separate" throughout claim 11 contending the prior art does not meet this limitation.

However, claims are given their broadest reasonable interpretation. Separate is commonly known to mean:

sep·a·rate (sèp'ē-rât') *verb*

1. To differentiate or discriminate between; distinguish: *a researcher who separated the various ethnic components of the population sample.*¹

Pertaining to the claims, Radle et al. (possesses a differentiated and distinguished mounting part 32 and is therefore separate by definition.

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Applicant contends the safety element of Radle et al. is not movable but Examiner contends that the safety element is surrounded by elastomeric elements 56 which would provide for some inherent movement of the safety element.

Applicant contends the safety element of Radle et al. is not a safety element. Examiner contends that if the bolt assembly was to break or fail, it would create an unsafe and substantially hazardous condition for the user. The safety element of Radle et al. is used in the same capacity as Applicant's invention.

Finally, Applicant contends the safety element 3 of Minamidate is not movable. Examiner contends that the safety element (piano wire) is well known and obviously movable.

For the reasons above, the grounds of rejection are deemed proper.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ibt



Stephen F. Gerrity
Primary Examiner